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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,
vs.
PACIFIC GAS AND ELECTRIC
COMPANY,
Defendant.

) No. CR 14-0175 WHA
)
)
)
**AMICUS CURIAE BRIEF OF
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL
UNION 1245 IN SUPPORT OF PACIFIC
GAS AND ELECTRIC COMPANY'S
RESPONSE TO ORDER TO SHOW
CAUSE**
)
Date: January 30, 2019
Time: 9:00 A.M.
Court: 12
Judge: Honorable William Alsup
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28 Amicus Curiae Brief of International Brotherhood of Electrical Workers Local Union 1245 (No. CR 14-0175 WHA)

Corporate Disclosure Statement

International Brotherhood of Electrical Workers Local Union 1245 is not a corporation. Local 1245 is a labor organization affiliated with American Federation of Labor - Congress of Industrial Organizations. Local 1245 represents approximately 20,000 workers in different capacities in the gas and electric utility industries from Bakersfield to Eureka, including the employees of PG&E, the employees of every publicly-owned utility in central and northern California except for the City of Palo Alto, the electric employees of the Western Area Power Administration and the United States Bureau of Reclamation, all construction linemen working in Local 1245's jurisdiction, and the line clearance tree trimmers in central and northern California.

Consent to File

Pursuant to the Federal Rule of Appellate Procedure Rule 29(a), Local 1245 submits this brief with the consent of all parties.^{1,2}

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¹ PG&E consented via email on January 20, 2019 and the United States of America consented via email on January 22, 2019.

² No counsel for a party in this case authored this brief in whole or in part. No party or counsel for a party contributed money intended to fund the preparation and submission of this brief. No person other than the amicus curiae, its members, or its counsel contributed money intended to fund the preparation of submission of this brief.

1 **I. STATEMENT OF INTEREST**

2 International Brotherhood of Electrical Workers Local Union 1245 is a labor organization
 3 affiliated with American Federation of Labor - Congress of Industrial Organizations. Local 1245
 4 represents approximately 20,000 gas and electric utility employees from Bakersfield to Eureka,
 5 including the employees of PG&E, every publicly-owned utility in central and northern
 6 California (except for the City of Palo Alto), the electric employees of the Western Area Power
 7 Administration and the United States Bureau of Reclamation, all construction linemen working
 8 in Local 1245's jurisdiction and the line clearance tree trimmers in central and northern
 9 California. Decl. of T. Dalzell at ¶ 3.

10 Local 1245 members are responsible for building, maintaining and repairing PG&E's
 11 electric distribution and transmission system and removing trees in proximity to PG&E's
 12 distribution and transmission lines. Decl. of T. Dalzell at ¶ 5. Pursuant to Federal Rules of
 13 Appellate Procedure Rule 29,³ Local 1245 submits this brief and the supporting declaration of
 14 Tom Dalzell, Local 1245's Business Manager, to provide Local 1245's unique experience with
 15 and firsthand knowledge of PG&E's electric system to aid the Court's consideration of imposing
 16 its proposed new conditions on PG&E's probation. Specifically, this brief and supporting
 17 declaration show that while Local 1245 fully supports the Court's goal of zero wildfires caused
 18 by PG&E's electric system and Local 1245 members would economically benefit from the
 19 availability of more work-hours, the Court's proposed conditions in the January 9, 2019 Order to
 20 Show Cause Why PG&E's Conditions of Probation Should Not be Modified (Order to Show
 21 Cause) are not logically or economically feasible and should not be required by the Court.
 22 ///
 23 ///
 24 ///

25 ³ See *High Sierra Hikers Ass'n v. U.S. Dept. of Interior* 2012 WL 1933744 *2 fn. 1 (courts may allow
 26 amicus briefs "when a party has an interest that may be affected by the disposition of this case, is not
 27 represented in the matter or has a unique perspective that can supplement the parties' arguments"), citing
CARE v. DARvter Bros. Dairy (E.D.Wash. 1999) 54 F.Supp.2d 974, 975, citing *MillerWohl Co. v. Comm'r of Labor & Indus.* (9th Cir. 1982) 694 F.2d 203, 204.

1 **II. ARGUMENT**

2 **A. The Court’s Proposed New Conditions of PG&E’s Probation are Not**
 Logistically or Economically Feasible

3 The Order to Show Cause proposes to add several new conditions to PG&E’s probation,
 including, prior to June 21, 2019, (1) re-inspecting all of PG&E’s electrical grid and removing or
 trimming all trees and branches that could fall into or hit power lines, poles or equipment in
 high-wind conditions, (2) identifying and fixing all conductors that could “swing together and
 arc” in high-wind conditions, (3) identifying and fixing “damaged or weakened poles,
 transformers, fuses and other connectors,” and (4) identifying and fixing “any other condition
 anywhere in its grid similar to any condition that contributed to any previous wildfires.” Order to
 Show Case at 2. While the Court’s goal – reducing the number of wildfires caused by PG&E in
 the 2019 wildfire season – is a worthy one which we share fully, the Court’s proposed conditions
 are “impractical to the point of impossible and costly to the point of impossible.” Decl. of T.
 Dalzell at ¶ 14.

4 The Order to Show Cause proposes requiring PG&E to inspect and repair its entire
 distribution and transmission system before June 21, 2019, the start of the 2019 wildfire season.
 Order to Show Cause at 2. PG&E’s electric grid includes approximately 125,000 miles of power
 lines, 2,300,000 distribution poles and 150,000 transmission towers and poles. Decl. of T.
 Dalzell at ¶ 4. Inspecting (without even considering repairing) PG&E’s entire electric grid in five
 months is impossible. *Id.*

5 There are nowhere near enough journeymen linemen (the highly skilled workers trained
 to inspect and repair the power lines, poles, towers and associated equipment) in the nation to
 inspect and repair PG&E’s whole system in five months. *Id.* at ¶ 6. PG&E has had to contract out
 line work and, even then, does not have enough linemen to do the work PG&E wants to do. *Id.*
 In late 2018, PG&E hired approximately 600 linemen from across the nation to inspect and
 repair a small portion of its system – about 50,000 transmission structures in high fire threat
 areas. *Id.* at ¶ 7. To attract and retain those 600 contractor linemen, PG&E had to pay them the
 equivalent of working 128 hours per week at the cost of about \$15,000 per lineman per week. *Id.*

1 In short, inspecting and repairing a very small portion of PG&E's system requires 600 linemen
 2 (all the linemen that PG&E could find in the entire nation) and \$9 million per week. "To
 3 implement the grid inspection and repair measures in the Order to Show Cause in five months
 4 would require *tens of thousands of linemen that don't exist* at a cost of *billions of dollars that*
 5 *PG&E doesn't have.*" *Id.* at ¶ 8 (emphasis added). The inspection and repair measures in the
 6 timeframe contemplated in the Order to Show Cause are simply not feasible.

7 Similarly, it is unlikely that there are enough qualified line clearance tree trimmers to
 8 perform the tree trimming work contemplated in the Order to Show Cause. Since November of
 9 2018, PG&E has brought line clearance tree trimmers from all over the nation to double its
 10 approximately 1,200 contractor line clearance tree trimmers. *Id.* at ¶ 11. This does not include
 11 employees who inspect lines to identify trees for trimming or removal or employees who audit
 12 the tree trimming work. *Id.*

13 Local 1245 also notes that the standards outlined in the Order to Show Cause are
 14 subjective and not ordinary standards used in the business. The grid inspection and repair
 15 measures (i.e. identifying and fixing all conductors that could "swing together and arc" in high-
 16 wind conditions, "damaged or weakened poles, transformers, fuses and other connectors" and
 17 "any other condition anywhere in its grid similar to any condition that contributed to any
 18 previous wildfires") are "entirely subjective" and "not consistent with the California Public
 19 Utilities Commission's General Order 95 or any other standards that utility engineers and
 20 linemen would understand or use." *Id.* at ¶ 8. The tree trimming standard (i.e. removing or
 21 trimming all trees and branches that could fall into or hit power lines, poles or equipment in
 22 high-wind conditions) is also not "ordinary language used in the industry" and "would require
 23 tens of millions of subjective decisions, branch by branch." *Id.* at ¶ 12. "Rather, ordinary
 24 language used in the industry would be requiring the utility to prune 'all branches to create a 12
 25 foot radial clearance zone at the time of prune,'" which is an objective standard that can be
 26 measured. *Id.*

27 Local 1245 appreciates and shares the Court's emphasis on safety and its desire to
 28 prevent all wildfires that may be caused by PG&E in the 2019 wildfire season. "Local 1245

embraces safety as a reality, not a theory.” *Id.* at ¶ 13. Local 1245 “members are hurt or killed in real time and in real places if they are not always vigilant.” *Id.* Local 1245’s “last fatality was a young apprentice lineman who was working on restoration of service after the Carr fire, which was started accidentally by a dual-axle travel trailer unrelated to PG&E.” *Id.* However, Local 1245 recognizes that the Court’s goal of zero PG&E-caused wildfires is not practical. Although the consequences were catastrophic and horrible, “[t]he incidents that led to the 2017 and 2018 wildfires were minor failures that happen every day in every utility. An electric utility does not operate in a laboratory and perfection is not possible.” *Id.* at ¶ 15. While Local 1245 “would welcome the millions of work-hours that a program such as that envisioned in the Order to Show Cause would bring,” “the program outlined in the Order to Show Cause is impractical to the point of impossible and costly to the point of impossible.” *Id.* at ¶ 14. Furthermore, the way to 100 percent prevent utility-caused wildfires would be to underground all services but, that too, is impractical and unaffordable. *Id.* at ¶ 9.

III. CONCLUSION

The inspection, repair and tree trimming measures outlined in the Order to Show Cause are not practically or economically feasible. Moreover, it is impossible to prevent 100 percent of utility-caused wildfires. Local 1245 urges the Court to refrain from imposing infeasible inspection, repair and tree trimming measures on PG&E, and to leave utility-caused wildfire prevention efforts to the agencies with expertise in the matter – the California Public Utilities

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1 Commission, the California Department of Forestry and Fire Protection, and the Occupational
2 Safety and Health Administration. *Id.* at ¶ 16.

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4 Date: January 25, 2019

Respectfully submitted,

5 /s/

6 _____
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15 1245

Re: United States of America v. Pacific Gas and Electric Company
United States District Court, Northern District Case No. CR 14-0175 WHA

PROOF OF SERVICE – ELECTRONIC TRANSMISSION

STATE OF CALIFORNIA/COUNTY OF San Mateo

I am a citizen of the United States and an employee in the County of San Mateo. I am over the age of eighteen (18) years and not a party to the within action. My business address is ADAMS BROADWELL JOSEPH & CARDOZO, 601 Gateway Blvd., Suite 1000, South San Francisco, California 94080.

On the date executed below, I electronically served the document(s) via USDC Northern District ECF Website, described below, on the recipients designated on the Transaction Receipt located on the USDC Northern District ECF website.

**AMICUS CURIAE BRIEF OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS LOCAL UNION 1245 IN SUPPORT OF PACIFIC GAS AND ELECTRIC
COMPANY'S RESPONSE TO ORDER TO SHOW CAUSE**

On the following parties:

PLEASE SEE SERVICE LIST PROVIDED BY USDC NORTHERN DISTRICT ECF
WEBSITE

I declare under penalty of perjury that the foregoing is true and correct and that this document is executed on January 25, 2019, at South San Francisco, California.

/s/

ALISHA C. PEMBER